THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.17224 OF 2005

DATED: 25 -07-2006

Between:

Yelugula Shiva Prasada Rao
S/o Late Chinna Paidaiah,
Cantonment, Vizianagaram.

... Petitioner

And:

The Station House Officer,
I Town Police Station,
Vizianagaram and others.

... Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.NO.17224 OF 2005

O R D E R:

The petitioner seeks a mandamus declaring the inaction of the 2nd and 3rd respondents in not initiating action against the complaints submitted by the petitioner to the 2nd respondent on 08-10-2004 and 04-07-2005, to the 3rd respondent herein dated.01-12-2004 and the fax message dated.03-05-2004, is illegal and arbitrary and deprivatory of his life and personal liberty; in violation of Article 21 of Constitution; and for a direction to the 2nd and 3rd respondents to institute an inquiry against Respondents Nos.6 to 8 herein pending their suspension, so as not to influence the witnesses and tamper with the records, and

based on the findings of the Enquiry Officer to punish the erring Police Officials by way of departmental action and prosecution under criminal law and to take necessary action against the accused in Cr.No.65 of 2003 of P.S.II Town, Visakhapatnam.

The petitioner's case:

Pursuant to a complaint lodged by the Andhra Bank Housing Finance Limited, Visakhapatnam against Dadi Ramakrishna and others, a complaint was registered as Cr.No.65 of 2003 for an offence punishable under Sections.419,420,468,471 I.P.C. in II Town P.S. Visakhapatnam. The petitioner is a list witness in the above. The accused therein are consistently and continuously pressuring him to turn hostile. As the petitioner declined, on 12-04-2004 at about 10.30 A.M the accused came to the petitioner's house carrying iron rods and attacked him and caused serious injuries to him. The petitioner however fortunately escaped on the intervention of his second son and his friends who were present at the place. The petitioner thereupon telephonically informed the District Crime Stopper. In response, the police came to the petitioner's house and took the petitioner and the other witnesses of the incident to the I Town Police Station, Vizianagaram. Despite his pathetic situation, the petitioner drew up a complaint and gave it to respondent Nos.7 and 8. The 6th respondent was not present in office at that time. Respondent Nos.7 and 8 instead of acting upon the complaint threatened the petitioner and refused to receive the complaint. This occurred in the presence of the accused and one former rowdy sheeter by name Maddala Bhaskar Rao, brother-in-law of the accused. The petitioner requested the police to send him to the hospital for medical examination. The police issued a receipt serial No.172 in token of having received his complaint and a memo directing him to the Government headquarters hospital escorted by a Constable. The

petitioner was treated as an out-patient and a wound certificate was also issued by the hospital authorities. After discharge from the hospital he went to the police station requesting them to register the complaint and provide protection from the accused. Thereupon 7th and 8th respondents advised him to meet 6th respondent.

On 13-04-2004 he went to the police station in the morning, explained the circumstances and requested that his complaint be registered. The then S.I of police- the 6th respondent asked him to go home and that due action would be taken. Thereafter on a number of occasions the petitioner requested respondent Nos.6 to 8 to supply a copy of the F.I.R but these respondents failed to give him a copy. On 09-07-2004 a news item was published in a local daily in which the 2nd respondent is reported to have stated that a crime was registered under Sec.290 of I.P.C against the persons who assaulted the prosecution witnesses in a bank cheating. The petitioner was shocked to learn that the case was registered under Sec.290 I.P.C. He then approached the concerned Court and obtained a certified copy of the calendar and judgment in S.T.C.No.337 of 2004 and learnt that a case was registered against them under Sec.3(12) of the Town Nuisance Act on 07-05-2004.

Thereafter the petitioner submitted a detailed complaint to the 2nd respondent on 08-10-2004 which was received by the said respondent on 11-10-2004, under acknowledgment. However, no action was initiated against respondents 6 to 8 by the 2nd respondent. The petitioner thereupon made a complaint to the 3rd respondent requesting action on his complaint and to act against respondents 6 to 8 herein and provide him protection in view of the threats by the accused in Cr.No.65 of 2003 in which he was the police witness. Pursuant to the petitioner's complaint, the 3rd respondent forwarded

the complaint to the 2nd respondent. Even thereafter no action was taken by the 2nd respondent. Several representations to the 3rd respondent were without avail. The petitioner thereupon preferred a private complaint. After recording his statement, his complaint D.D.R.No.2606/2005 was rejected by an order dated.20-03-2005 on the ground that no cognizance could be taken on a complaint against public servants unless sanction is obtained from the State Government.

The petitioner then submitted a complaint to the 4th respondent through e-mail requesting necessary action and complaining that the 2nd and 3rd respondents had failed to act upon his earlier complaint, that he is continuously receiving serious threats from the accused in Cr.No.65 of 2003 and also from respondent Nos.6 to 8 as he had filed a private complaint against these officers and had also lodged a complaint before the 3rd respondent. The petitioner further pleads that the 4th respondent had ordered an inquiry by the Additional Deputy Commissioner of Police, Visakhapatnam. He attended the inquiry. Respondent No.7 and the accused in Cr.No.65 of 2003 were also present at the enquiry. After recording the statements, the 4th respondent directed the Circle Inspector-II Town to file an application for cancellation of bail to the accused in Cr.No.65 of 2003. The lower Court had however not cancelled the bail bonds on the ground that the crime was not registered against the accused. The petitioner states that on account of the inaction of the respondent Nos.6 to 8, the conscious and overt protection afforded by them to the accused who attacked the petitioner on 12-04-2004, on account of the erroneous entries made by the respondent nos.5 to 7 and due to inaction of the respondent Nos.2 and 3, he had suffered an injury and threats to his life and personal liberty.

The petitioner's grievance is that the State has wholly failed to protect him, a prosecution witnesses from the accused. He is thus before this Court seeking the above reliefs.

The writ petition was filed on 03-08-2005. The learned Government Pleader for Home took notice and undertook to obtain instructions on 04-08-2005. Thereafter a formal notice before admission was ordered on 24-08-2005. Earlier on 09-08-2005 as there was no response to the notice on admission taken by the learned Government Pleader for Home, this Court passed an order that the Government Pleader shall either submit instructions from the 2nd and 3rd respondents or these respondents shall be present in this Court on 16-08-2005. On 05-06-2006 when the mater was again listed, this Court noticing that no counter-affidavit of any of the respondents was filed, directed that respondent Nos.2 to 5 should file individual counter-affidavits by the next date of hearing i.e., 20-06-2006 failing which these respondents be present in the Court. Respondent nos. 2 to 5 have filed counter-affidavits and so has the 6th respondent.

Heard the counsel for the petitioner and the learned Government Pleader for Home for respondent Nos.2 to 5 and Sri D.Chandra Sekhar the learned counsel for the 6th respondent.

The 2nd respondent's counter dated.18-06-2006 and filed on 20-06-2006 reads as under:

(a) The respondent perused the relevant records of the I Town Police Station and enquired with the concerned police officers. The enquiry revealed that the petitioner had lodged a complaint on 12-04-2004, which was received at 12.30 hours. The complaint was lodged with the 7th and 8th respondents alleging that Dadi Sridnivasa Rao and Dadi Ramakrishna who are brothers

came to the complainant's house suddenly and beat him, as a result of which he sustained injuries and he requested the 1st respondent to refer him to the Government hospital. On receiving the report, respondent Nos.7 and 8 examined the petitioner's neighbour, found the incident to be non-cognizable in nature and therefore did not register the case but entered the same in the General Diary vide receipt No.172 of 2004. Earlier Dadi Ramakrishna had lodged a complaint with the 1st respondent in the police station against the petitioner alleging that the petitioner manhandled and beat him and seeking necessary action. This complaint was also entered in the General Diary vide receipt No.171 of 2004 at 12.15 hours since it too was a non-cognizable offence.

(b) The petitioner's allegation that respondent Nos. 6 to 8 have forced him to withdraw the complaint dated.12-04-2004 is untrue nor is it true that there is a threat to his life from respondent Nos.6 to 8 and the accused in Cr.No.65 0f 2003. Further the petitioner has no connection with the petty case Nos.174 and 175 as he is neither the complainant nor concerned with the issue involved therein. That case involves a petty quarrel between Dadi Srinivasa Rao and Dadi Ramakrishna.

(c) The counter in para.4 admits that the petitioner submitted a petition to the answering respondent on 08-10-2004, which was received on 11-10-2004. After receiving the said complaint he initiated an enquiry through the Inspector of Police, Vizianagaram Town Circle who after conducting a departmental enquiry

submitted his report dated.27-05-2005 to the respondent. The petitioner's complaint dated.01-11-2004 to the 3rd respondent was endorsed to the answering respondent on 03-11-2004. Similarly another petition to the 3rd respondent was also endorsed to the answering respondent on 01-12-2004 and the enquiry report sent to the 3rd respondent by the answering respondent on 17-06-2005.

(d) It is further asserted by the 2nd respondent that another representation submitted by the petitioner on 04-07-2005 to the answering respondent was endorsed to the Additional Superintendent of Police, Vizianagaram for enquiry and report. The Additional Superintendent of Police conducted an enquiry into the matter and submitted his report dated.16-08-2005. Pursuant to the interim order of this Court in this writ petition dated.24-08-2005 the accused in Cr.No.65 of 2003 were bound over under Sec.107 Cr.P.C. on the file of the Sub-Divisional Magistrate, Vizianagarm vide M.C.No.24 of 2005 and a regular beat was also arranged near the house of the petitioner for his protection. Though the petitioner objected to the surveillance he did not do so in writing nor did he seek withdrawal of the protection and therefore watch is being maintained. According to the 2nd respondent, the petitioner's allegation that respondent Nos.6 to 8 and the accused in Cr.No.65 of 2003 are threatening the petitioner for having given evidence in Cr.No.65 of 2003 as a witness is not true and the 2nd respondent's enquiry revealed that there is no threat to the petitioner from any quarter much less from

respondent Nos.6 to 8. The 2nd respondent also denied in para.8 that no cognizance was taken on his complaint dated 12-04-2004. The 2nd respondent asserts that the petitioner's complaint dated.12-04-2004 is non-cognizable and hence was not registered. The nature of the injury suffered by the petitioner is simple in nature as per the wound certificate issued by the Doctor who treated him. The petitioner was treated as an out-patient in the Government Headquarters Hospital at Vizianagarm and the certificate issued by the Doctor clearly shows that the injuries suffered are simple in nature. The 2nd respondent also states that the petitioner did not disclose that he was beaten with an iron rod. The complaint merely stated that he was beaten by hands and therefore the complaint was treated as non-cognizable. Only before the Doctor did he state that he was beaten with iron rods and not in the complaint. The accused in Cr.No.65 of 2003 also gave a complaint against the petitioner, which was also treated as non-cognizable and they were also sent for medical examination to the Government Head-quarters Vizianagarm. The injuries sustained by the petitioner as well as the accused in Cr.No.65 of 2003 are simple in nature and were caused due to blunt force.

(e) In Para.10 of the counter-affidavit, the 2nd respondent states that on receiving the report of the Additional Superintendent of Police, Vizianagarm, the answering respondent's predecessor Smt.Bhavna Saxena, had issued charge memo to the respondent Nos.6 to 8 for their failure in taking prompt action and

called for their explanation and thereafter all the three respondents were awarded “censure” on 24-04-2006. The 2nd respondent prays for dismissal of the writ petition on the above pleadings.

The 3rd respondent filed a counter-affidavit. According to this counter on receiving complaint from the petitioner this respondent endorsed the same to the 2nd respondent for taking necessary action on 03-11-2004 and 01-12-2004; the 2nd respondent got the matter enquired into by the Inspector of Police, Vizianagarm Town Circle and forwarded his report dated.12-06-2005. The respondent-police personnel were awarded the punishment “censure” for not handling the case properly.

The 4th respondent’s counter states that the accused in Cr.No.65 of 2003 were enlarged on bail, the application for cancellation of bail was dismissed on 28-07-2005 and the charge sheet in the case was filed on 14-07-2005and the case is posted to 6-7-2006 for supply of copies to the accused. It is further stated that the petitioner’s e-mail complaint was referred to the Additional Deputy Commissioner of Police, Visakhapatnam city for report and the concerned II Town Police Station was directed to take necessary steps to file an application to cancel the bail which was filed but rejected. Prompt action was taken and enquiry conducted against respondent Nos.6 to 8 by the Additional Deputy Commissioner of Police.

The 5th respondent has filed a counter-affidavit reiterating the averments of respondent Nos.3 and 4.

Along with the counter-affidavit of the 2nd respondent, is enclosed a report dated.27-05-2005 of the Inspector of Police, Vizianagaram Town Circle. This report states that the Officer enquired into the allegations leveled by the petitioner and had verified the

records of the I town Police Station. D.Ramakrishna and his associates cheated several banks in Visakhapatnam by availing a number of housing loans in huge amounts by producing forged documents and in respect of which Cr.No.65 of 2003 under Sec.420,468, 471 and 120(B) of I.P.C was registered in II Town Crime P.S., Visakhapatnam. Other cases were also registered against D.Ramakrishna and his associates. The petitioner was examined as one of the list witnesses and his detailed statement recorded by the investigating officer. Later D.Ramakrsihna and associates were arrested by the police, sent to judicial custody and were thereafter enlarged on bail. The report further states that as the petitioner is a witness in Cr.No.65 of 2003, D.Ramakrsihna bore a grudge against the petitioner and with a view to wreck vengeance along with brother D.Srinivasa Rao went to the house of the petitioner and had a heated altercation with him which resulted in a scuffle between the parties. Both the parties beat up each other and pushed around and sustained injuries. During the scuffle the petitioner received injuries on both upper lower lips and the right hand wrist. The petitioner complained to the District Crime Stopper on the attack. Thereupon the police brought the petitioner, his son and the respondents to Vizianagarm I Town Police Station. Both the parties lodged report against one another alleging to have been beaten up by the other party. The complaints were received and acknowledged and both parties were sent to the Government hospital for medical examination. The report clearly records that “after sending both parties for medical examination, the S.I of Police, I I-town P.S. Vizianagarm neither obtained the wound certificates nor initiated follow-up action.” The report states that the inquiry officer had obtained the wound certificates from Medical Officer, Government Headquarters Hospital, Vizianagarm which had endorsed an the opinion that the injuries suffered by the petitioner and his son were simple in nature and could have been caused by a blunt object.

According to the opinion of the Medical Officer, the case under Sec.324,323 of I.P.C ought to be registered against the respondents. The Medical Officer also opined that no external injuries are seen on the body of the respondents. This report clearly recorded that " the enquiry reveals that the S.I of Police had neither obtained the wound certificates of the petitioner nor had initiated any follow-up action immediately, which gave scope for the petitioner to file a number of representations to the Higher authorities."

The Additional Superintendent of Police, Vizianagaram sent up a report dated.16-08-2005 to the 2nd respondent, after conducting a detailed enquiry as directed by the 2nd respondent into the complaint by the petitioner against the respondents Nos.6 to 8. The findings in the report of the Additional Superintendent of Police, Vizianagarm read as under:

"*There is a private case pending disposal in DDR No.2006/2005 on the file of the AJFCM, Vizianagarm filed by the petitioner against R-6 and R-8 and the Court has already taken cognizance of the same and directed the petitioner to obtain necessary sanction orders from the concerned authorities for prosecuting the respondent Nos.6 and 8. The petitioner has already requested the concerned for sanction of prosecution against R-6 and R-8.*

Similarly the writ petition filed by the petitioner in the honourable High Court of A.P. Hyderabad i.e., W.P. No.17224 of 2005 is pending disposal and the matter is sub-judice. The respondents were already directed to attend the Court.

Now that the present enquiry proved that R-6 and R-8 have deliberately failed in discharging their legitimate duties by not registering the report of the petitioner thought the contents attracted the provisions of Criminal Trespass and Simple Hurt which are of cognizable in nature and also exhibited gross negligence, dereliction

of duty and fabricating the record with wrong entries by showing that action was already taken on the complaint given by the petitioner on 12-04-2004.

It is therefore requested that R-6 to R-8 may be dealt with departmentally for the above delinquencies pending disposal of the cases mentioned supra."

Thereupon by the proceedings dated.16-04-2006 the then incumbent of the 2nd respondent's office after affording an opportunity to the 6th respondent to show-cause had passed an order awarding a 'censure". The 2nd respondent's Order dated.16-04-2006 awarding "censure" to the 6th respondent reads as under:

"*There are clear ingredients of trespassing and causing hurt to the petitioner and his son, being Sub Inspector of Police, you should have registered the case immediately and the case should have been investigated into properly. In spite of the above ingredients, the Sub-Inspector of police did not take this as cognizable offences and took it as a pretty(sic-petty) case. You deliberately failed to discharge his legitimate duty by booking the incident under Sec.3(xi) of T.N.Act vide petty case Nos.174 and 175 dated.01.07.03.5.04 by suppressing the gravity of the criminal offence in the records with wrong entries by showing that action was already taken on the complaint give by the petitioner on 12-04-2004. Due to you improper action and inaction, the petitioner has come to a conclusion that the police connived with the accused and he has decided to take the case to the High Court. Accordingly, he filed writ petition No.17224 of 2005, which led to the damage of police integrity in the public eye."*

From the material on record and the averments in the counter affidavits filed by the respondents 2 to 5, it is clear that Dadi Ramakrishna and others are accused in Cr.No. 65 of 2003 on the file of the II Town PS (Crime), Visakhapatnam for offences under Sections

490, 429, 468, 471 and 120B IPC, wherein they are alleged to have cheated several banks in Visakhapatnam by availing housing loans in huge amounts by producing forged documents. The petitioner is a prosecution witness in the aforesaid case. It is also admitted by the 2nd respondent that on perusal of the relevant records of the I Town PS and on enquiry with the concerned Police Officers, the petitioner is seen to have lodged a complaint on 12.4.2004 with the respondents 7 and 8 (i.e., the Head Constable and Assistant Sub Inspector of the I Town PS, Vizianagaram) that Dadi Srinivasa Rao and his brother Ramakrishna came to his house suddenly and beat him. As a result he sustained injuries. Clearly the complaint alleges criminal trespass by Dadi Ramakrishna and his brother Srinivasarao. The respondents 7 and 8 however did not register the complaint.

The 2nd respondent's counter at Para-3 denies the petitioner's allegation that respondents 6 to 8 are forcing him to withdraw his complaint dated 12.4.2004 as also the allegation that there is threat to the petitioner's life from these respondents and the accused in Cr. No. 65/03. The 2nd respondent's counter is however silent as to the inference to be drawn from the circumstance that the accused in Cr.No.65/03 went to the petitioner's (a prosecution witness) house, entered into an altercation there and caused him injuries and what inference must be drawn from the conduct of respondents 6 to 8 refusing to register the petitioner's complaint dated 12.4.2004, which clearly discloses commission of a cognizable offence by the accused in Cr.No.65/03.

Either respondents 6 to 8 are so incompetent, ignorant and uninstructed in the provisions of the Indian Penal Code as to have failed to see that the complaint dated 12.4.2004 is one of criminal trespass by Dadi Ramakrishna and Srinivasa Rao or have deliberately failed to register the complaint for reasons known perhaps to the 2nd

respondent and the other respondents under whom these officers are working. If the respondents 6 to 8 have such dismal levels of ignorance as to the provisions of the Indian Penal Code and the Criminal Procedure Code, their continuance in office, atleast without sending them for an intense training, poses a serious handicap to the efficiency of the police force. If the respondents 6 to 8 have deliberately failed to exercise the statutory jurisdiction and the consequent statutory obligation to register a cognizable offence, these officers are guilty of defiance of the Criminal Procedure Code, again a very serious delinquency viz., defiance by Inspectors and Head Constables of a legislative mandate. Surely this Republic is safer without police officers who dishonour and defy the legislative mandate and without superior police officers who consider such defiance a minor misconduct warranting imposition of the most trivial of punishments known to disciplinary law – Censure.

From the three disciplinary orders passed by the then Superintendent of Police, Vizianagaram, each dated 16.4.2006, imposing the penalty 'censure' on respondents 6 to 8, it appears that the Superintendent of Police was more sensitive to the damage to police image in public perception than concerned about the delinquency of respondents 6 to 8. it is unfortunate that the Superintendent of Police did not even initiate the ritual if not the substance, of initiating major disciplinary proceedings against the respondents 6 to8.

The entirety of conduct in this case discloses a disturbing lack of commitment to the rule of law and absence of fidelity to the legislative mandate and shared values of indifference (across the hierarchy) to the mandate of law. That the respondents 6 to 8 should have treated the conduct of an accused criminally trespassing into the house of a prosecution witness to be a petty matter falling under the Town Nuisance Act; and that the Superintendent of Police of the

District should have considered such conduct of respondents 6 to 8 a trivial misconduct; and that respondents 3 to 5 the higher administrative authority of the police force in the State have not been disturbed either by the conduct of respondents 6 to 8 or the casual attitude of the 2nd respondent to such conduct; suggest a critical situation, to this court.

As the imposition of the penalty of censure on the respondents 6 to 8 by the 2nd respondent by proceedings dated 16.4.2006, constitutes in the considered view of this court a wholly reckless and irrelevant exercise of disciplinary power, having regard to gravity of the misconduct and delinquency apparent from the record of the case, and as the legal injury suffered by the petitioner as a consequence of the abdication of statutory responsibility by the police, in the mater of registering his complaint conveying information as to the commission of a cognizable offence, has not received the legislatively mandated attention by police officers, this court consider it appropriate to award costs in an amount of Rs.25,000/- (Rupees Twenty Five thousand only) by the respondents 1 to 5 to the petitioner, payable within a period of one month from the date of receipt of a copy of this order.

As it is once established that the petitioner has been threatened by the accused in Cr.No. 65/03, the 2nd respondent is directed to ensure continued, uninterrupted and an adequate level of security to the petitioner, till the conclusion of Cr.No.65/03. The respondents 2,3 and 5 are directed to ensure expeditious investigation in Cr.No. 65/03 on the file of the II Town Police Station, Vizianagaram and further to ensure that a final report is filed before the appropriate court within a period of three months from the date of receipt of a copy of this order, if not already filed. If any further time is required, a detailed affidavit shall be filed, setting out the steps already taken, the investigation done, details of manpower employed, the reason for the failure to file

the final report even after three years and what further time is required and in what circumstances. It is open to the respondents 2 to 5 to take appropriate administrative measures to recover the amount of costs directed in this writ petition from the officer/officers found responsible for bringing about the situation warranting imposition and payment of costs.

The writ petition is allowed with costs as above.

Dated:25/7/06 ----------

Pvsn/Tsnr Justice G.Raghuram